Supreme Court, U.S.
FILED
FEB 19 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1082

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

IN RE: CONTEMPT CITATION OF
HUGH D. HOLBROCK,
Petitioner,

ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF OHIO

BRIEF IN OPPOSITION OF RESPONDENT WARREN COUNTY COMMON PLEAS COURT

JAMES L. FLANNERY,
Prosecuting Attorney
313 E. Warren Street
Lebanon, Ohio 45036
(Counsel of Record)
(513) 932-2224

COURT INDEX PRESS, INC. — 215 E. Ninth Street, Cincinnati, Ohio 45202 — (513) 241-1450

QUESTIONS PRESENTED

A. Will the Supreme Court of the United States exercise jurisdiction to consider a case in which a petitioner seeks review of factual findings of a trial court?

B. Does the equal protection clause or the due process clause of the fourteenth amendment to the United States Constitution provide the right of trial by jury for petty offenses?

C. Does the equal protection clause or the due process clause of the fourteenth amendment to the United States Constitution require that the contemptor in cases of direct contempt receive a citation in contempt?

D. Does the equal protection clause or the due process clause of the fourteenth amendment to the United States Constitution require in cases of direct contempt for the trial judge in whose presence the contempt occurred remove himself and appoint another judge to make a finding on the contemptor's contempt?

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Respondent Warren County Common Pleas Court, respectfully requests this Court to deny the petition for writ of certiorari, seeking review of the decision of the Supreme Court of Ohio in this case.

STATEMENT OF THE CASE

Petitioner was co-counseling the defense of a criminal defendant in a case being tried before the Common Pleas Court of Warren County, Ohio. After petitioners co-counsel had addressed the Court in argument upon a motion before the court out of the presence of the jury, petitioner began to address the court on the same motion. Petitioner was advised by the court that local court rules permitted that only one attorney be permitted to address any one specific issue. There ensued a dialogue between counsel and the court, a copy of which has been appended to the petition for a writ of certiorari heretofore filed in this court. Petitioner after several requests to desist from arguing with the court and after having shown disrespect for the trial judge was found in con-

tempt. The petitioner was subsequently sentenced to two days in jail and a $500.00 fine with the court suspending all but $100.00 of the sentence.

REASONS WHY THE WRIT SHOULD BE DENIED

A. WILL THE SUPREME COURT OF THE UNITED STATES EXERCISE JURISDICTION TO CONSIDER A CASE IN WHICH A PETITION SEEKS TO REVIEW FACTUAL FINDINGS OF A TRIAL COURT?

Petitioner in large part has asked this court to determine whether or not his conduct represented contempt in presenting an immediate obstruction of justice. No reviewing court is in a position to resolve factual questions such as those presented herein. In addition, the rules of practice of the Supreme Court, Rule 17.1, sets forth a non-exclusive listing of the special and important reasons which this court in its discretion will consider in determining whether to grant certiorari. The factual issues presented in petitioner's petition is not included among those special and important reasons and the respondent therefore respectfully moves this court to deny certiorari.

B. DOES THE EQUAL PROTECTION CLAUSE OR THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDE THE RIGHT TO TRIAL BY JURY FOR PETTY OFFENSES?

In instances of direct contempt, as occurred here constitutional procedural due process rights including that to a jury trial, do not and cannot apply because of the need for the immediate punishment of one who is impeding and obstructing the function of the court by his contemptuous act. As Ohio Revised Code Sec. 2705.01 is not a criminal statute but rather provides for the procedure to be followed in cases of direct contempt, petitioner may now here claim that his contempt is

a serious offense for which trial by jury is required based upon that statute. It has long been recognized that the inherent power of a court to punish for contempt may not be limited by legislative authority as such would violate the doctrine of separation of powers. This court in the case of *Baldwin* vs. *New York*, 399 U.S. 66, 90 S. Ct. 1886, 26 L. Ed.2d 437 (1970) specifically recognized that in cases of contempt where there is no established maximum penalty the right to trial by jury depends upon the penalty actually imposed. *Baldwin*, *supra*, further held that the line of demarcation between petty offenses and serious offenses in which the right to trial by jury inheres, would be six months imprisonment. As the petitioner herein was sentenced to only two days in jail and only a $500.00 fine with all but $100.00 of the fine suspended the application of the "penalty actually imposed test", employed by this court in *Baldwin*, *supra*, can only result in a finding that the petitioners contempt is a petty offense for which his right to trial by jury does not apply.

C. DOES THE EQUAL PROTECTION CLAUSE OR THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION REQUIRE THAT THE CONTEMPTOR IN CASES OF DIRECT CONTEMPT RECEIVE A CITATION IN CONTEMPT?

In cases of direct contempt, it is neither practical nor possible for the contemptor to receive a citation in contempt as his acts are occurring directly before the court and the need for immediate punishment to prevent the further obstruction of justice is required. This power is inherent in all courts and works no constitutional infirmary upon the contemptor.

D. DOES THE EQUAL PROTECTION CLAUSE OR THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION REQUIRE IN CASES OF DIRECT CONTEMPT FOR THE TRIAL JUDGE IN WHOSE PRESENCE THE CONTEMPT OCCURRED REMOVE HIMSELF AND APPOINT ANOTHER JUDGE TO MAKE A FINDING ON THE CONTEMPTOR'S CONTEMPT?

It certainly goes without saying that in cases of direct contempt it is neither practical nor possible for the judge in whose presence the contempt occurred to remove himself and appoint another judge to hear the contempt. This is once again a matter that is inherent in the trial courts authority to control the proceedings and due to the very nature of direct contempt the court must be able to proceed in a summary manner to prevent the further obstruction of justice.

CONCLUSION

Respondent respectfully submits that the questions presented by the petitioner are either not cognizable before this court or present no federal constitutional violations.

Respectfully submitted,

JAMES L. FLANNERY,
Prosecuting Attorney
313 E. Warren Street
Lebanon, Ohio 45036
(513) 932-2224